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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,125	02/17/2004	David McKay	611920-1	6481

45684 7590 10/03/2006

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EXAMINER

EDWARDS, LAURA ESTELLE

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,125

Applicant(s)

MCKAY, DAVID

Examiner

Laura Edwards

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-22 is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Information Disclosure Statement

The information disclosure statement filed 1/6/06 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. There is no electronic copy for the cited PCT document, WO 00/78159 and the Examiner has been unable to obtain a copy. Please provide a copy of this document in your next response.

Claim Objections

Claims 7 and 8 are objected to because of the following informality: in claim 7, --of-- needs to be inserted after "operation". Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Savage (US 4,420,948).

Savage teaches a modular and reconfigurable ice cream processing system comprising a plurality of ice cream including ice cream cone grasping and retaining apparatuses (65); a transport mechanism (61) for moving the plurality of conical confection shell grasping and retaining apparatuses from a first point (closed position) to a second point (open position); and a plurality of individual temperature maintenance/pressure maintenance or manufacturing stations (drawers; col. 7, lines 16-39), each station adapted to perform tempering and/or pressurizing of the ice cream (col. 8, lines 36-51), wherein one or more of the plurality of manufacturing stations is adapted for relocation to various points or position in the system, whereby one drawing can be replaced or placed in another position in the system. Even though Savage is silent concerning dwell time between processing can be adjusted by moving an appropriate station, it would have been obvious to one of ordinary skill in the art to position or reposition the drawers in the system accordingly with respect to the most frequently sold ice cream in the system. One of ordinary skill in the art would expect to place the most sold ice cream product at eye level with the less frequently sold ice cream below eye level. Purchasing of the ice cream would be faster with said arrangement.

Allowable Subject Matter

Claims 9-22 would be allowable.

Claims 9-22 would allowable because there is no teaching or suggestion in the prior art of a modular and reconfigurable frozen cone confection manufacturing system comprising the combination of a frozen cone confection manufacturing line having a plurality of conical confection shell grasping and retaining apparatuses, each of the conical confection shell grasping and retaining apparatuses adapted to grasp and retain conical confection shells whether in an upright or inverted position; a means of loading conical confection shells to the plurality of conical confection shell grasping and retaining apparatuses; a transport mechanism for moving the plurality of conical confection shell grasping and retaining apparatuses along the length of a frozen cone confection manufacturing line; a plurality of relocatable manufacturing stations, each relocatable manufacturing station adapted for relocation to various points along the length of the manufacturing line and further adapted to perform one or more frozen cone confection manufacturing process steps as conical confection shell grasping and retaining apparatuses containing conical confection shells pass by, each manufacturing station comprising: (1) an actuating assembly, comprising: the actuating assembly further (a) a pair of vertical support members adapted to reside on opposite sides of the transport mechanism, and designed to support manufacturing components used to perform specific manufacturing process step(s) with which the manufacturing station is tasked, (b) a vertical lift unit having a drive means operative to adjust the distance of the manufacturing components from the open end of the conical shells, and (c) at least one guide for directing movement of the manufacturing station along the length of the manufacturing line; (2) manufacturing components used to perform specific manufacturing process step(s) with which the manufacturing station is tasked, and (3) a supply of material, or a means for connection to a supply of material, for use in the specific manufacturing

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process step(s) with which the manufacturing station is tasked, a means of unloading conical confection shells from the plurality of conical confection shell grasping and retaining apparatuses; and a processor-based control system for providing data regarding the manufacturing process to the plurality of relocatable manufacturing stations and for controlling the operation of the plurality of relocatable manufacturing stations and the transport mechanism; whereby the plurality of relocatable manufacturing stations are repositioned as needed along the length of the manufacturing line in order to manufacture frozen cone confections having dissimilar manufacturing parameters.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents disclose ice cream manufacturing systems: Pedersen et al, Mayer, Lewis, and Sportolari.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura Edwards whose telephone number is (571) 272-1227. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Laura Edwards
Primary Examiner
Art Unit 1734

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September 28, 2006